

DRAWING AMENDMENTS

Applicant proposes that FIGS. 4 and 5 of the drawings should be canceled and FIGS. 6-13 should be amended as indicated in the accompanying annotated sheets and that the description should be amended accordingly. If the examiner approves of the proposed amendments, suitable replacement sheets will be filed.

REMARKS

With regard to point 1 on page 2 of the Office Action, the International application as originally filed contained claims 1-31. The annexes to the International Preliminary Report on Patentability (which is the International Preliminary Examination Report under Article 35) contain claims 1-22 received by the IPEA on November 20, 2004 and accordingly applicant believes that the claims contained in the annexes to the International Preliminary Report on Patentability, as opposed to the claims of the International application as originally filed, are considered to be the claims of record on entry of the International application into the U.S. national stage. Consequently, applicant believes that it is correct to have canceled claims 1-22 and for the new claims to have started numbering at claim 23.

Claims 34, 35 and 38 have been amended to overcome the examiner's rejection of claim 34 and to correct other informalities in the claims.

Claim 23 stands rejected under 35 USC 103 over Martin in view of Russell and over Maki in view of Russell.

Claim 23 has been amended to include the feature recited in claim 24.

The present invention, as defined in claim 23, relates to an exerciser for use with regard to physiotherapy in support particularly of orthopedic surgery to a patient's knee. the exerciser operated by acting as a skid upon which the patient can rest his heel to allow principally forwards and rearwards movement for gentle initial exercise about the knee. the objective is to allow the exerciser to be used by a patient in bed. In such circumstances the exerciser, while allowing articulation about a user's knee, must be stable in that appreciable rocking, or a rocking motion, should be avoided. In accordance with claim 23, the slide surface is substantially flat and an articulation to accommodate slide elongation is achieved through the user's heel pivoting upon the exerciser.

Martin relates to an exerciser for use in relation to fallen arch and other foot deformities and in which generally the user stands with both feet located upon the upper surface and the exerciser rocks about a curved rocking surface 8 resting on a flat support surface 10. There is no articulation of a user's ankle and clearly standing on the exerciser would be impractical for an orthopedic patient. The exerciser Martin uses is designed to rock back and forth or side to side to help ankle joint and foot problems and not to provide an initial stage of physiotherapy with regard to recovery from an orthopedic procedure performed on a knee. The rocking motion of Martin will not effect sliding movement of the exerciser on the flat support surface 10.

In application of the present invention, the heel simply acts as the means in order to allow the exerciser to slide to and fro upon a floor or bed. Martin does not teach engagement of the exerciser by a user's heel in a manner such that the heel and exerciser pivot to enable slide movement rather than rocking movement and articulation of the user's heel about a non-slip association.

The examiner has indicated that Russell discloses a grip surface. This may be true. However, the disclosure of Russell is in relation to a home gymnasium rather than with regard to physiotherapy activities and the association of the grip surface is with a foot rather than a heel of a user. There is no description in Russell with regard to allowing articulation about a user's heel to enable slide movement upon a floor or bed surface.

The examiner has indicated that a combination of Martin and Russell would result in the present invention. Applicant submits that Martin and Russell, whether taken individually or collectively, do not disclose or suggest the features of the present invention and in particular in relation to slide movement of the exerciser, articulation of the heel, or selective deformation with a user's heel. Furthermore, the respective

teachings of Martin and Russell are contrary to each other and therefore a person of ordinary skill would not consider combining them. Martin relates to a device for exercising feet and with the purpose of correcting malformations, defects and weaknesses. In such circumstances, the engagement surface of the exerciser defined by Martin by its nature must retain its shape in order to act against the foot deformations and must therefore be relatively robust and non-compliant. The teaching of Russell as indicated relates to a home gymnasium for physical fitness and muscular conditioning. Such robust and strenuous exercising is inconsistent with the remedial purposes of martin and furthermore by provision of deformable pads it will be appreciated that the necessary robustness in shaping to provide correction to malformations in a foot in the manner taught by Martin would not be achieved.

Maki describes a device to allow rocking exercise whilst standing on a platform or sitting on a chair. Such rocking motion is only fore and aft and again is a robust and aggressive rocking motion. The present invention avoids a rocking action and allows articulation about a user's heel. There is no description in Maki of allowing such articulation about a user's heel. Maki also teaches that both feet of a user are engaged by the exerciser in normal use. The teaching of Maki is to provide straps and friction strips to engage a user's foot in order to accommodate the relatively aggressive rotary movements and rocking. Such straps would prevent heel articulation. Provision of a deformable surface for engagement with a user's foot as taught by Russell would therefore lead to the straps requiring further adjustment. Maki and Russell in combination do not teach engagement by a user's heel, articulation to allow slide movement and appropriate presentation of the heel on the exerciser by simple resting upon the grip surface.

The examiner relies on FIG. 10 of Maki as disclosing a flat slide surface. FIG. 10 of Maki illustrates the underside of the foot support platform. The relatively flat grip surface on the

upper surface of the platform comprises friction strips 32 and therefore cannot be considered to be a slide surface.

Accordingly in order to satisfy the "flat slide surface" limitation of claim 23, the platform would have to have a flat slide surface at its underside. The exerciser of Maki does not have a flat slide surface on its underside. On the contrary, as shown in FIGS. 6-8, the platform executes a rocking motion and the surface that engages the floor is not flat.

In view of the above it is submitted that the invention defined in claim 23 is not disclosed or suggested by Martin, Maki and Russell '851, whether taken singly or in combination. Accordingly, claim 23 is patentable and it follows that the dependent claims also are patentable.

With regard to claim 36, the examiner has suggested that Martin discloses a device which is generally oblong. However, a review of the figures at least indicates that the Martin device comprises a number of layers of material, none of which can be considered oblong in shape. The upper surface is specifically shaped for arched engagement with a user's feet for remedial action and creation of an oblong shape in the rocking base would inhibit the rocking required for the remedial action.

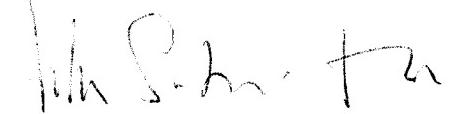
With regard to claim 41, the examiner has acknowledged that Martin fails to disclose a device incorporating a cushioning material between the grip and the slide surface. As indicated above, the reason for such failure is the necessity of a robust engagement between the foot for remedial action in relation to deformities. Provision of the highly deformable surface in accordance with the teaching of Russell would be contrary to the purposes of Martin and therefore the combination would not be obvious to a person of ordinary skill in the art.

With regard to claim 43, the examiner has indicated that Martin shows a recessed and shaped surface for engagement with a user's foot. However, as indicated above, this engagement must be robust to provide remedial action and therefore will generally not deform for a non-slip engagement and provision of such a

deformable non-slip surface would be contrary to the teaching of Martin.

Russell '661, applied to claims 31, 33 and 34, relates to an exerciser for use in relation to the relatively strenuous exercise of running, squatting and other situations where jarring is possible. The inserts of Russell '661 will therefore be made from relatively robust material in order to act as a shock absorber rather than a non-slip surface. Clearly, with regard to physiotherapy and orthopedic training where simple slide exercise is utilized in order to exercise a user's knee, jarring would be wholly inappropriate. As indicated above, Martin teaches provision of a robust surface for deformity correction and therefore any deformation would be detrimental to such an objective. Deformability as taught by Russell '851 or Russell '661 would therefore be unacceptable.

Respectfully submitted,



John Smith-Hill
Reg. No. 27,730

SMITH-HILL & BEDELL, P.C.
16100 N.W. Cornell Road, Suite 220
Beaverton, Oregon 97006

Tel. (503) 574-3100
Fax (503) 574-3197
Docket: SWIN 3268